

9-17-2013

## State v. Olson Appellant's Brief Dckt. 40379

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 40379
Plaintiff-Respondent,	)	
	)	JEROME COUNTY NO. CR 2006-4443
v.	)	
	)	
GENE CHARLES OLSON,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	

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BRIEF OF APPELLANT

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APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF JEROME

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HONORABLE JOHN K. BUTLER  
District Judge

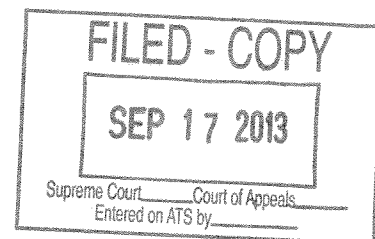
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## STATEMENT OF THE CASE

### Nature of the Case

Gene Charles Olson's probation was transferred to the State of Washington pursuant to an Interstate Compact agreement. While in Washington, he violated the terms of his probation. The State of Washington held a hearing and found Mr. Olson guilty of violating the terms of community custody. Washington sanctioned Mr. Olson to confinement of 250 days in the Okanogan County Jail. Mr. Olson seeks credit for the 250 days served in the Washington jail.

### Statement of the Facts and Course of Proceedings

In 2006, the prosecuting attorney charged Mr. Olson by Information with the crimes of possession of a controlled substance and driving without privileges. (R., pp.27-28.) Pursuant to a plea agreement, Mr. Olson pleaded guilty to possession of a controlled substance, and in exchange, the State agreed to dismiss the driving without privileges charge. (Tr., p.6, Ls.6-11.) The district court imposed upon Mr. Olson a unified sentence of seven years, with two years fixed. (Tr., p.28, Ls.19-22; R., pp.60-83.) Mr. Olson's sentence was suspended, and in July 2007, he received an Interstate Compact to reside in Washington. (R., pp.113, 116.)

On April 9, 2010, the State of Washington conducted a hearing in accordance with WAC 137-104 and determined that Mr. Olson violated the conditions or requirements of community custody. (R., pp.142, 200.) Mr. Olson was found to have committed eleven (11) separate violations. (R., p.142.) Washington recommended returning Mr. Olson to the sending state (Idaho). (R., p.143.) As an alternative to Idaho retrieving Mr. Olson, Washington sanctioned Mr. Olson to confinement of 250 days in the Okanogan County Jail. (R., pp.143, 200.)

Over a year later, on April 20, 2011, the State of Idaho issued a warrant on the probation violation filed in the instant case. (Tr., p.54, L.8-p.55, L.8; R., pp.170-171, 197.) The parties agreed that first warrant was issued April 20, 2011. (Tr., p.55, Ls.14-19.) The district court credited Mr. Olson for a total of 575 days, reflecting the time from the date the warrant was issued through disposition and 100 days of prejudgment incarceration. (Tr., p.55, L.20-p.56, L.1.)

On May 12, 2011, Mr. Olson was convicted of possession with intent to manufacture or delivery a controlled substance and unlawful possession of a firearm in the second degree. (R., p.180.) Mr. Olson committed these crimes in Washington on March 24, 2010. (R., p.182.) He was sentenced to 30 months incarceration.<sup>1</sup> (R., p.180.) After serving his sentence on the Washington felony conviction, he was transported to Idaho on June 5, 2012. (R., p.197.)

Mr. Olson admitted that he violated the terms of his probation. (Tr., p.41, L.3-p.48, L.13.) The district court revoked Mr. Olson's probation. (Tr., p.64, Ls.2-8.) Pursuant to Rule 35, the district court executed a reduced sentence of seven years, with one year fixed. (Tr., p.64, Ls.2-8.)

Mr. Olson timely appealed the district court's Order On Motion To Revoke Probation. (R., pp.214-215.) One of the issues included in the Notice of Appeal was "whether the court's refusal to grant the defendant credit for the 250 days imposed by the State of Washington was in error." (R., pp.214-215, 228-231.)

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<sup>1</sup> Mr. Olson may have received credit for good behavior because he served less than the full 30 months. (Tr., p.53, L.21-p.54, L.4.)

### ISSUE

Did the district court err when it denied Mr. Olson's Motion for Credit for Time Served for the 250 days imposed by the State of Washington and served in the Okanogan County Jail pursuant to a decision in Washington to sanction Mr. Olson for violating the terms of his community custody agreement?

## ARGUMENT

### The District Court Erred When It Denied Mr. Olson's Motion For Credit For Time Served For The 250 Days Imposed By The State Of Washington And Served In The Okanogan County Jail Pursuant To A Decision In Washington To Sanction Mr. Olson For Violating The Terms Of His Community Custody Agreement

The defendant shall receive credit for time served from the date of service of the bench warrant. I.C. § 19-2603.<sup>2</sup> Idaho Code “section 19-2603 provides that if a probationer has been arrested and probation revoked as a result of a violation, the defendant’s incarceration from the time of service of the bench warrant will count as part of the sentence.” *State v. Buys*, 129 Idaho 122, 127 (1996); accord *State v. Lively*, 131 Idaho 279, 280 (1998). When a defendant serves jail time as a condition of probation, however, the defendant is not entitled to the credit for that time served. *State v. Dana*, 137 Idaho 6, 8 (2002); *State v. Banks*, 121 Idaho 608, 609-10 (1992). The rationale behind this rule is that a defendant voluntarily agrees to serve jail time in order to receive probation; the jail time is a condition of probation. *Banks*, 121 Idaho at 610.

In the instant case, on April 9, 2010, the State of Washington conducted a hearing in accordance with WAC 137-104 and determined that Mr. Olson violated the conditions or requirements of community custody. (R., pp.142, 200.) Mr. Olson was found to have committed eleven (11) separate violations. (R., p.142.) Washington recommended returning Mr. Olson to the sending state (Idaho). (R., p.143.) As an

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<sup>2</sup> Idaho Code § 19-2603 provides:

When the defendant is brought before the court in such case, it may, if judgment has been withheld, pronounce any judgment which it could originally have pronounced, or, if judgment was originally pronounced but suspended, the original judgment shall be in full force and effect and may be executed according to law, and the time such person shall have been at large under such suspended sentence shall not be counted as a part of the term of his sentence, but the time of the defendant’s sentence shall count from the date of service of such bench warrant.



alternative to Idaho retrieving Mr. Olson, Washington sanctioned Mr. Olson to confinement of 250 days in the Okanogan County Jail. (R., pp.143, 200.) Mr. Olson should have been given credit for this period of time because it was not served as a condition of probation. The district court erred in denying Mr. Olson's Motion For Credit For Time Served. Mr. Olson respectfully request that he be given credit for 250 days.

Idaho Code § "19-2603 provides that if a probationer has been arrested and probation revoked as a result of a violation, the defendant's incarceration from the time of service of the bench warrant will count as part of the sentence." *State v. Buys*, 129 Idaho at 127. In *Buys*, the probation officer requested an order for incarceration to hold the defendant until an investigation could be completed to determine if the defendant violated the terms of probation. *Id.* at 123, 127. The defendant was also arrested at the same time for statutory rape. *Id.* at 123. The Court of Appeals found that the order of incarceration was the "functional equivalent of a bench warrant issued as a consequence of an alleged violation of probation terms." *Id.* at 128. The Court of Appeals found that the order of incarceration had an effect upon the defendant's liberty even though he was also arrested pursuant to a warrant for a new offense. *Id.* The Court of Appeals explained that even if the defendant were able to bond out on the new charges, he would not be eligible for release because of the order of incarceration on the potential probation violation charge. *Id.*

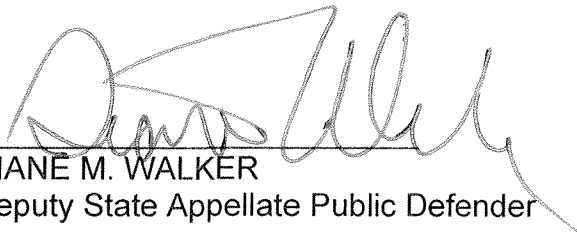
The instant case is similar to the *Buys* case. Not only was Mr. Olson arrested on new charges, the Washington authorities placed a hold on him by filing documents and proceeding forward to a due process hearing. (R., pp.142-143, 200.) Even had Mr. Olson been able to bond out on the new charges, his sanction for violating the terms of the community custody agreement would have had an effect on Mr. Olson's liberty.

Mr. Olson was being held on the functional equivalent to a bench warrant from April 9, 2010 for a total of 250 days. Mr. Olson was involuntarily incarcerated through the Washington procedure. Mr. Olson should be given credit for 250 days served in Okanogan County Jail for violating the terms of the community agreement in the instant case.

#### CONCLUSION

Mr. Olson respectfully requests that this Court issue an order crediting him for 250 days served in Washington on the instant case for violating the terms of the community agreement.

DATED this 17<sup>th</sup> day of September, 2013.



DIANE M. WALKER  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17<sup>th</sup> day of September, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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INMATE #85204  
SICI  
PO BOX 8509  
BOISE ID 83707

JOHN K BUTLER  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

STACEY DEPEW  
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\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

DMW/eas